

REMARKS

Claims 1-38 were originally filed in the present application. Claims 8, 9, 12, 17, 18, 24, 28, and 35-37 had previously been cancelled. The instant amendment cancels claims 2-6, 10-16, 21-23, 25, 26, and 29-34. Thus, upon entry of the instant amendment, claims 1, 7, 19, 20, 27, and 38 remain pending. Claims 1 and 20 are independent.

Applicants have filed the instant amendment, accompanying Request for Continued Examination, and Information Disclosure Statement, to withdraw the pending appeal and reopen prosecution of the present application. The claims of the present application were last rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,559,189, to Baker et al., hereinafter "Baker." Applicants respectfully submit that the present amendments overcome this rejection.

In response to the statements on p. 5 of the Examiner's Answer mailed on November 24, 2008, Applicants respectfully submit that the tampons of the present claims clearly illustrate the claimed synergistic effect. As shown on p. 12-13 of the specification, the tampons having the claimed about 2.5 wt% based on the weight of the tampon of polyoxyethylene fatty acid ester finishing agents exhibit vastly improved reduction of TSST-1 toxin growth over tampons having amounts of finishing agents outside of this range. This is true for at least two values within the claimed range of antibacterial agents. Applicants have therefore illustrated a composition having synergistic antibacterial properties effective to neutralize the production of TSST-1 toxin and reduce *Staphylococcus aureus* bacteria growth that is not appreciated in Baker.

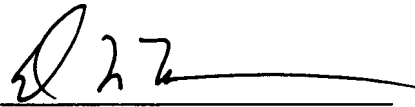
Applicants also re-assert the arguments stated on p. 5 of the Appeal Brief submitted on October 1, 2007. Namely, that Baker discloses an exceedingly broad

disclosure of possible compounds for use in emulsions. One of ordinary skill in the art would have to undergo undue experimentation to arrive at the narrow list of antibacterial agents and finishing agents, present in the narrow weight ranges, that are recited in the present claims.

Therefore, Applicants respectfully submit that the present application is patentable over Baker under 35 U.S.C. §103(a), and request that any remaining rejections be withdrawn. The issuance of a Notice of Allowance is earnestly solicited.

Respectfully submitted,

January 26, 2009

A handwritten signature in black ink, appearing to read 'E. McMahon', followed by a horizontal line.

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